

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

APRIL TERM, 1922.

No. 3833

906

H. L. RUST, APPELLANT,

vs.

GEORGE W. TUCKER.

**APPEAL FROM THE RENT COMMISSION OF THE DISTRICT OF
COLUMBIA.**

FILED JUNE 15, 1922.

PRINTED JUNE 27, 1922.

Court of Appeals of the District of Columbia

APRIL TERM, 1922.

No. 3833.

H. L. RUST, APPELLANT,

vs.

GEORGE W. TUCKER.

APPEAL FROM THE RENT COMMISSION OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3833.

H. L. RUST, Appellant,

vs.

GEORGE W. TUCKER.

1 Before the Rent Commission of the District of Columbia.

No. 3404.

GEORGE W. TUCKER, Complainant,

vs.

H. L. RUST, Defendant.

TRANSCRIPT OF RECORD.

Filed November 10, 1921. D. C. Roper, Jr., Secretary.

Be it remembered that before the Rent Commission of the District of Columbia, at the City of Washington, in said District, the following papers were filed and proceedings had, in the above entitled cause.

Complaint.

Filed May 10, 1921.

Before the Rent Commission of the District of Columbia.

No. 3404.

GEORGE W. TUCKER, Complainant,

vs.

H. L. RUST, Defendant.

Petition to Fix and Determine Fair and Reasonable Rent.

To the Rent Commission of the District of Columbia:

Your complainant, Geo. W. Tucker, respectfully avers and shows to the Commission:

That he is the tenant and occupant of the premises known as (Lamont Apt. #32) 1627 Lamont St., N. W. in the City of Washington, District of Columbia, and has resided in the said premises for the past seven years; that he is paying to the defendant, H. L. Rust, Agent, the sum of \$65.00 per month as rent for the said premises.

Your complainant avers and charges that the sum of \$65.00 per month is an unfair and unreasonable rent for the said premises in view of the size, conditions, and location of the same and the service furnished your complainant, and he respectfully prays the Commission to inquire into, fix and determine the fair and reasonable rent for the said premises, and to grant him (her) such other and further relief as the nature of the case may require.

The following increases have been made in the rent for the said premises from the beginning of your complainant's tenancy to the present date:

Previous rentals.....	\$35.00
Present rental.....	\$65.00
New rental demanded.....	\$65.00

2 The name and address of the defendant are as follows:
H. L. Rust, Agt., 912 15th St., N. W.

(Signed)

GEO. W. TUCKER,
Complainant.

This case was appealed to Supreme Court.

* * * * *

Answer of Defendant.

Filed May 23, 1921.

Now comes the defendant in the above entitled case and states that the complainant agreed to pay a rental of \$65.00 per month for apartment No. 32, The Lamont Apartment House, 1627 Lamont Street, Northwest, in consideration of the making of certain repairs and improvements to the property, and in view of this expenditure on the part of the owner of the property, and in consideration of the rental to be paid, the defendant asks that the complaint filed be dismissed.

The defendant further states that the rental of \$65.00 per month now paid for said apartment by the defendant is fair and reasonable and only nets the owner a reasonable return upon the value of the property.

(Signed)

H. L. RUST.

May 20, 1921.

Notice of Hearing.

* * * * *

To Mr. H. L. Rust,
912 Fifteenth Street N. W.,
Washington, D. C.:

You are hereby notified that the above-entitled case has been set for hearing before the Rent Commission on Wednesday, September 14, 1921, at 2 o'clock P. M., in the rooms of the Commission on the fifth floor of the Hooe Building, No. 1330 F St., N. W., Washington, D. C. If this case has already been settled you should notify the Secretary of the Commission immediately.

[SEAL.]

THE RENT COMMISSION OF THE
DISTRICT OF COLUMBIA,
By DANIEL C. ROPER, JR.,
Secretary.

September 9, 1921.

3

Determination of the Commission.

Filed October 10, 1921.

* * * * *

Upon consideration of the complaint of George W. Tucker, filed herein on the tenth day of May, 1921, the answer filed to said complaint by the defendant, H. L. Rust, the evidence and arguments submitted by the respective parties, and a view and careful inspection of the apartment hereinafter mentioned, the Commission, this seventh day of October, A. D. 1921, finds and determines that the sum of sixty-five dollars (\$65.00) per month, heretofore paid by the said George W. Tucker, as rent for the apartment mentioned in said complaint, to wit, Apartment No. 32, in the apartment house known and designated as The Lamont, No. 1627 Lamont Street, Northwest, in the City of Washington, District of Columbia, is an unfair and unreasonable rent for said apartment, under the conditions disclosed by the evidence and by said view and inspection, and that the fair and reasonable rent for said apartment, on the date of the filing of said complaint and under the said conditions, was, and now is, fifty-five dollars (\$55.00) per month.

By the Commission:

[SEAL.]

CLARA SEARS TAYLOR,
WM. F. GUDE,
Commissioners.

*Motion of Defendant to Fix Valuation of "The Lamont," 1627
Lamont Street N. W.*

Filed October 13, 1921.

* * * * *

Comes now the defendant in the above entitled cause, by his attorneys, and moves the Commission to fix the value of "The Lamont" apartment, No. 1627 Lamont Street, Northwest, Washington, D. C. The ground of the foregoing motion is that the determination of the Commission filed herein October 10, 1921, contains no finding as to the value of said apartment.

LECKIE, COX & SHERIER,
Attorneys for Defendant.

4

Order of Commission Fixing Value of Property.

Filed October 19, 1921.

* * * * *

Upon consideration of the motion of the defendant, H. L. Rust, filed herein on the thirteenth day of October, 1921, it is, by the Commission, this eighteenth day of October, A. D. 1921,

Ordered that the determination made and filed herein on the tenth day of October, 1921, fixing the fair and reasonable rent for Apartment No. 32, in the apartment house known and designated as The Lamont, No. 1627 Lamont Street, Northwest, in the City of Washington, District of Columbia, be, and the same hereby is, amended by adding to said determination, the following:

The Commission further finds and determines that the fair market value of the said apartment house is fifty-two thousand and five hundred dollars (\$52,500.00).

By the Commission:
[SEAL.]

CLARA SEARS TAYLOR,
WM. F. GUDE,
Commissioners.

Notice of Appeal.

Filed October 20, 1921.

* * * * *

Comes now the defendant in the above entitled cause, by his attorneys, and notes an appeal to the Court of Appeals of the District of Columbia, from the determination filed herein on the 10th day of October, 1921.

LECKIE, COX & SHERIER,
Attorneys for Defendant.

Order Fixing Penalty of Appeal Bond.

Filed October 20, 1921.

On motion of the defendant in the above entitled cause, it is this 20th day of October, 1921,

5 Ordered, that the penalty of the bond on appeal in the above entitled cause is hereby fixed at \$100.00, or in lieu thereof a deposit of \$50.00 in cash.

A. LEFTWICH SINCLAIR,
CLARA SEARS TAYLOR,
Commissioners.

Memorandum of the Filing and Approval of Appeal Bond.

The bond on appeal herein was duly filed and approved the 20th day of October, 1921.

DANIEL C. ROPER, JR.,
Secretary.

Assignment of Errors.

Filed Nov. 10, 1921.

* * * * *

Comes now the defendant in the above-entitled cause and assigns for review on appeal error committed by the Commission in the following particulars:

1. In holding that the rent of \$65.00 heretofore paid by the plaintiff was unfair and unreasonable;
2. In determining that the rent of \$55.00 was a fair and reasonable rent for the apartment in question;
3. In holding that the value of the Lamont Apartment is \$52,500.

LECKIE, COX & SHERIER,
Attorneys for Defendant.

Notice of Submission of Bill of Exceptions.

Filed Nov. 11, 1921.

* * * * *

Please take notice that we will submit a bill of exceptions in the above-entitled cause, copy of which is hereto attached, to the Rent Commission of the District of Columbia, on November 11, 1921.

LECKIE, COX & SHERIER,
Attorneys for Defendant.

6 *Affidavit as to Service of Notice of Submission of Bill of Exceptions.*

I, Pleasanton Bowie, on oath, state that on the 1st day of November, 1921, I served upon George W. Tucker, copy of the bill of exceptions filed herein.
 PLEASANTON BOWIE.

Subscribed and sworn to before me this — day of November, A. D. 1921.
 G. CALVERT BOWIE,
Notary Public, D. C.

Orders Extending Time for Filing Transcript of Record in the Court of Appeals.

The time for filing the transcript of record in the above-entitled cause in the Court of Appeals was regularly extended from time to time to and including the 15th day of June, 1922.

I, W. E. Chapman, Sec'y of the Rent Commission of the District of Columbia, certify the foregoing pages numbered one (1) to — (—) both inclusive, to be a true and correct transcript of the record, according to the directions of counsel herein filed, copy of which is made a part of this transcript in Case No. 3404, wherein George W. Tucker is the complainant and H. L. Rust is the defendant, as the same remain upon the files and record of said Commission.

7 In testimony whereof, I have hereunto subscribed by name and affixed the seal of said Commission at the City of Washington and said District, this 15th day of June, 1922.

[Seal of the Rent Commission of the District of Columbia.]

RENT COMMISSION OF THE DISTRICT
 OF COLUMBIA,
 By W. E. CHAPMAN, *Secretary.*

8 Before the Rent Commission of the District of Columbia.

No. 3404.

GEORGE W. TUCKER, Complainant,
 vs.

H. L. RUST, Defendant.

The above-entitled cause came on for trial before the Rent Commission of the District of Columbia.

Thereupon, the complainant, GEORGE W. TUCKER, testified that he occupied Apartment No. 32, on the third floor, in the Lamont Apartment House, No. 1627 Lamont Street, N. W.; that there are four rooms, kitchen, bath and entrance hall in said apartment; that he has occupied said apartment since October, 1915; that he paid, as rent for said apartment, at the beginning of his tenancy, \$35 per month; that in 1917 his rent was increased to \$38.50 per month;

that in 1920 his rent was increased to \$50 per month; and that in October, 1920, his rent was increased to \$65 per month; that there are sixteen apartments in the building; that the heat furnished the said apartment was insufficient last winter, and frequently his apartment was cold during the day; that on one occasion the furnace broke down; that the defendant papered the living room and bedroom recently; that the bath room was papered with cheap paper and looks as bad as it did before; that the hall and dining room need papering, and that the defendant refused to paper these; that the paint is off the doors of his apartment, and that the windows should be puttied; that he complained to Mrs. Miller, the owner of the apartment house, about lack of heat last winter; that there is no elevator in said apartment house and no bells; that said property is assessed for taxes in the District of Columbia, as follows: Land, \$3,833; building, \$30,000.

Thereupon, the complainant offered in evidence a letter received by him from Mrs. Sabina M. Miller, the owner of said apartment house, as follows:

9

"August 27, 1921.

Mr. G. W. Tucker,
Apartment #32, The Lamont,
Washington, D. C.

DEAR MR. TUCKER:

I have just been informed by the H. L. Rust office, who are my agents for the management of The Lamont, that it will be necessary to install a new furnace this winter to adequately heat the apartment.

As this furnace will cost eight hundred and fifty dollars, six hundred of which must be paid in advance to secure the boiler; and as I am already heavily burdened paying for papering, painting, awnings, etc., all of which has been done within the last six months, I find it necessary to ask my tenants to assist me in paying for the above mentioned repairs.

Instead of asking an increase in rent to pay for the repairs, I am asking that each and every tenant pay me \$10 a month for a period of six months.

If you are willing to help me, and I feel sure that each of you will see the justice in my request, please signify your intention of so doing by signing the enclosed postal card and mailing same.

Thanking you for your consideration of this letter, I am,

Very truly yours,

SABINA M. MILLER, *Owner.*"

On cross examination, the complainant further testified that he made requests for repairs to his entire apartment, in writing, to Mr. Bowie; that the defendant papered the living room, the bedroom and the bath room, and painted the bath room and kitchen; that the kitchen and bath room were so badly painted that complainant painted them again himself; that he signed a lease for the apartment because he had either to do that or to vacate; that he did not sign

the lease for \$65 per month, upon the condition that repairs would be made.

Thereupon, the defendant offered in evidence a statement of the rentals received in 1920, hereto attached as Exhibit A, showing that the owner at the then prevailing rent schedule received \$2,690.36 net, and that after paying 7% interest on the encumbrances amounting to \$32,000, there remained net to the owner \$450.36. The owner's equity in the building is worth more than \$30,000. The

10 defendant further offered in evidence a statement covering the period from January 1, 1921, to August 31, 1921, hereto attached as Exhibit B, showing that the owner received net \$2,966.12. For the entire year 1921 at the present rent schedule the owner would receive less than \$4,500. This latter statement did not include the expense of installing a new boiler at a cost of \$1,110, for which the owner had contracted at the date of hearing. Thereupon, the defendant offered in evidence a statement showing the number, size and rental of apartments, hereto attached as Exhibit C.

Thereupon, BATES WARREN, being called as a witness for the defendant, testified that he formerly owned the Lamont Apartment House which he constructed some years ago. He is familiar with the values of real estate in the District of Columbia, having for a number of years been engaged in the building and real estate business; that in his judgment the Lamont Apartment House is worth at least \$60,000, and perhaps more; that he built the Lamont Apartment House, but does not recall the cost of construction; that he has not built any apartment houses during the past five years; that he has not been inside the Lamont Apartment House for eleven years; that this type of building depreciates 3% per annum, and that this percentage of depreciation "should start at the beginning and go through to the end."

Thereupon, J. F. M. BOWIE, a witness called on behalf of the defendant, testified that he has been in the real estate business for the past eighteen years and is familiar with the values of real estate in the District of Columbia. He has examined the Lamont Apartment House and in his opinion that property is worth from \$65,000 to \$70,000. That since December, 1920, the owner expended for repairs on Apt. 32 occupied by the complainant, the sum of \$77.50.

11 Thereupon, EDGAR S. KENNEDY, being called as a witness for the defendant, testified that he is a member of the firm of Kennedy Brothers, builders and dealers in real estate; that he had inspected the Lamont Apartment and measured it with the result that it contained 245,700 cubic feet, and that it would cost to replace the same at prevailing prices 35 cents per cubic foot, or a total of \$85,895; that the site upon which the Lamont Apartment is situated contains 5,475 square feet; that he is familiar with values of real estate in the District of Columbia, and in his judgment this ground is worth conservatively \$1.50 per square foot or \$8,212; that allowing for depreciation at the rate of 3% per year from the

date of the completion of the building in 1909, and deducting that amount from the reproduction cost plus the value of the land, makes the value of the building and ground at the present time, \$63,147.

The determination fixing \$55 per month, as the fair and reasonable rent for said Apartment 32, in said apartment house, was made by the Rent Commission after a personal view and inspection of the said apartment and of said apartment house, and after careful consideration of the character of construction and the condition of said apartment house and the character of the service furnished therein.

And now the defendant prays the Rent Commission to sign this, his Bill of Exceptions, and the same is accordingly signed, now for then, and made a part of the record in this case, this 12th day of June, A. D. 1922.

CLARA SEARS TAYLOR,
WM. F. GUDE,
Rent Commissioners, D. C.

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EXHIBIT A.

Statement of Lamont Apartment for Year 1920.

By Rent Collected	\$8,346.34
To Taxes	\$447.50
Water Rent	98.81
Carpentry	22.35
Cleaning Supplies	16.98
Coal	1,063.70
Electric Light	123.82
Electric Repairs	85.79
Gas	6.24
Lamps	16.15
Miscellaneous Expenses	56.55
Painting	44.00
Painting Supplies	26.49
Papering	384.75
Plastering	33.00
Plumbing	200.75
Refuse	60.00
Repairs Miscellaneous	283.80
Salaries	471.30
Supplies Miscellaneous	67.57
Telephone	18.60
Commission	417.33
3% depreciation on value of improvements \$57,000	1,710.00
Net Income	2,690.86

\$8,346.34 \$8,346.34

5,655.98 Total Expense.

A.B.P.

EXHIBIT B.

*Statement of Lamont Apartment from January 1st to
Aug. 31st, 1921.*

By Rent Collected		\$7,540.19
Miscellaneous Credit		3.85
To Water Rent	\$91.05	
Carpentry	20.85	
Cleaning Supplies	25.95	
Coal	795.73	
Electric Current	108.41	
Electric Repairs	44.24	
Gas	.92	
Lamps	7.35	
Miscellaneous Expenses	25.25	
Painting	206.00	
Papering	231.75	
Plastering	49.45	
Plumbing	63.20	
Refuse	40.00	
Repairs Miscellaneous	120.75	
Salaries	300.00	
Supplies Miscellaneous	34.15	
Telephone	17.30	
Taxes \$1.95 rate \$612.69, for $\frac{2}{3}$ one yr...	408.46	
Awnings (paid by owner)	270.00	
Screens (paid by owner)	159.00	
Fire insurance \$40,000., 3 years \$185.00, for $\frac{2}{3}$ one year	41.10	
Commission	377.01	
3% depreciation on value of improve- ments, \$57,000, \$1,710.00 one year, for $\frac{2}{3}$ of a year	1,140.00	
Net Income	2,966.12	
	\$7,544.04	\$7,544.04

A.B.P.

14

EXHIBIT C.

The Lamont Apartment House,
1627 Lamont Street,
Washington, D. C.

Four stories and cellar, ordinary construction, containing sixteen apartments, varying in size from three rooms, reception room and bath to five rooms, reception room and bath, as enumerated below:

Apartment No.	1,	5	rooms, reception room and bath,	\$60.00
"	"	2, 5	" " " "	60.00
"	"	3, 3	" " " "	45.00
"	"	4, 4	" " " "	55.00
"	"	21, 5	" " " "	65.00
"	"	22, 5	" " " "	65.00
"	"	23, 3	" " " "	45.00
"	"	24, 4	" " " "	55.00
"	"	31, 5	" " " "	65.00
"	"	32, 5	" " " "	65.00
"	"	33, 3	" " " "	50.00
"	"	34, 4	" " " "	55.00
"	"	41, 5	" " " "	65.00
"	"	42, 5	" " " "	65.00
"	"	43, 3	" " " "	45.00
"	"	44, 4	" " " "	55.00

Endorsed on cover: District of Columbia Rent Commission. No. 3833. H. L. Rust, Appellant, vs. George W. Tucker. Court of Appeals, District of Columbia. Filed Jun- 15, 1922. Henry W. Hodges, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

SEP 11 1922

IN THE *Henry C. Hoag*
Court of Appeals of the District of Columbia

No. 3833

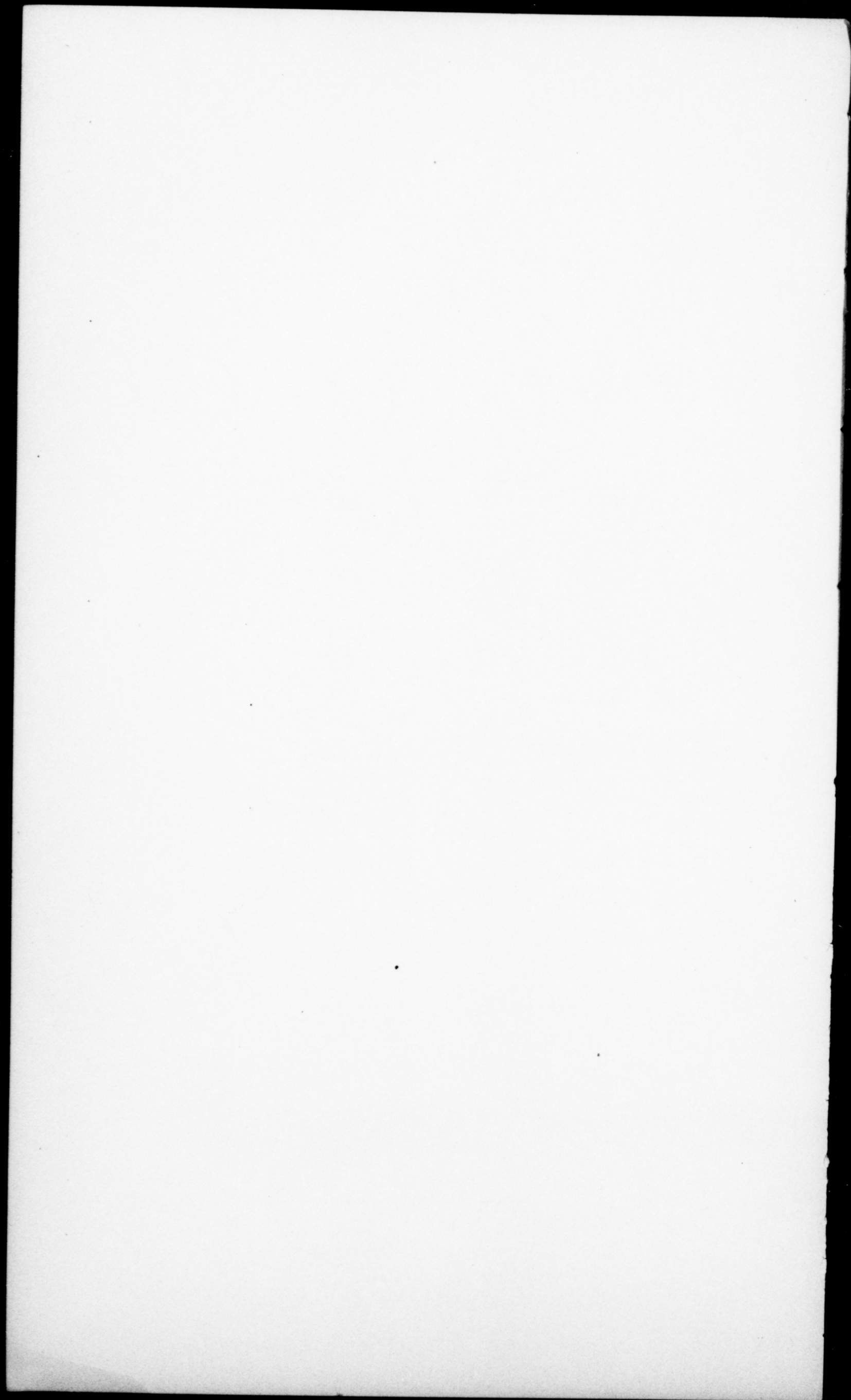
H. L. RUST, *Appellant*,
vs.
GEORGE W. TUCKER, *Appellee*.

No. 3834

H. L. RUST, *Appellant*,
vs.
R. E. PILKINTON, *Appellee*.

BRIEF FOR APPELLANT.

JOSEPH W. COX,
JOSEPH T. SHERIER,
Attorneys for Appellant.



IN THE
Court of Appeals of the District of Columbia

No. 3833

H. L. RUST, *Appellant*,
vs.
GEORGE W. TUCKER, *Appellee*.

No. 3834

H. L. RUST, *Appellant*,
vs.
R. E. PILKINTON, *Appellee*.

BRIEF FOR APPELLANT.

STATEMENT OF CASE

These appeals are from determinations of the Rent Commission reducing the rent on two apartments in the Lamont Apartment, 1627 Lament Street, Northwest. On apartment 32 occupied by the appellee Tucker the rent was reduced from \$65, the prevailing schedule, to \$55 per month, and on apartment 34 occupied by the appellee Pilkinton from \$55, the prevailing schedule, to \$47.50 per month.

The Lamont is of ordinary construction, four stories high, and contains sixteen apartments, each containing from 3 to 5 rooms, and a reception room and bath

(R., p. 11). At the prevailing schedule of rents obtaining in 1921 the gross annual return to the owner, without making any allowance for vacancies or losses, would have been \$11,316.06 (R., p. 10). The gross expenses of operation, including the cost of boiler contracted for by the owner (R., p. 8), would have been \$7,976.88. The Commission fixed the value of the property at \$52,500 (R., p. 4).

On the action of the Commission in thus reducing the rents and fixing the value of the property the appellant bases his three assignments of error (R., p. 5).

ARGUMENT

It is contended by the appellant (1) the valuation fixed by the Commission is arbitrary and not justified by the evidence, and (2) the rents as determined by the Commission are confiscatory.

(1) None of the expert witnesses fixed the value of the property at less than \$60,000. The witness Warren, the builder and original owner of the building fixed the value as "at least \$60,000 and perhaps more" (R., p. 8). The witness Bowie fixed the value at from \$65,000 to \$70,000 (R., p. 8); and the witness Kennedy testified that the building contained 245,700 cubic feet, to reproduce which at the time of hearing would cost \$85,895; that the site containing 5,475 square feet of land is worth conservatively \$1.50 a square foot or \$8,212, and that allowing for depreciation from the date of the completion of the building in 1909 at the rate of three per cent a year, and deducting the same from the reproduction cost plus the value of the land makes the value of the building and ground \$63,147. In the face of this testimony, and without showing the basis of its finding, the Commission fixed the value of the property at \$52,500. It would seem that when the Commission disregarded all of the testimony, which

was uncontradicted, the basis of their valuation should at least have been explained on the record.

(2) The gross rents for the year 1921 at the prevailing schedule (R., p. 11) would have amounted to \$11,316.06. By reference to Exhibit B (R., p. 10), which shows the receipts and expenses for the first eight months of the year, it can be readily determined that the expenses for the year, including depreciation at 3% amounted to \$6,866.88, exclusive of the cost of installing a new boiler which the owner had contracted for at the date of the hearing, the price of which was \$1,110.00 (R., p. 8), making the total expenses and depreciation \$7,976.88 for the year. Deducting this amount from the gross receipts \$11,316.06 leaves the net return for the year \$3,339.88. This is only about 5.5 per cent on \$60,000, the lowest valuation placed on the property by any of the witnesses, and only about 6.3 per cent on the extremely low valuation of \$52,500 placed on the property by the Commission.

It is thought thus to appear clearly that the rates established by the owner were not unfair and unreasonable, but provided only for a minimum just return from the property. In the case of apartment 32, however, (which contains five rooms, reception room and bath), the Commission reduced the rent from \$65 to \$55 per month, and in the case of apartment 34 (which contains four rooms, reception room and bath), from \$55 to \$47.50 per month. It is demonstrable that if the rate of reduction on either of these apartments be applied to the rates on all the apartments in the building, the owner will be deprived of a just and reasonable return from his property.

Taking the lower rate of reduction applied to apartment 32 and applying the same rate of reduction to the entire schedule, the gross returns would be \$9,575.14, leaving, after deducting the cost of opera-

tion and depreciation only \$1,598.26, or about 2.6 per cent on a valuation of \$60,000 or about 3 per cent on a valuation of \$52,500. If no allowance, whatever, should be made for depreciation, the net return on the basis of the Commission's rate on apartment 32, would be approximately five and one-half per cent on a valuation of \$60,000 and only 6.3 per cent on a valuation of \$52,500. If the rate fixed by the Commission on apartment 34 be applied throughout the building, obviously a considerably lower percentage of return would result.

If for the argument, we accept the low valuation of \$52,500 placed on the property by the Commission, and assume the valuation on the building to be as low as \$45,000 and then allow for depreciation at three per cent, the total for operation and depreciation becomes \$7,616.88, which when deducted from \$9,575.14, the gross return under the rate fixed by the Commission, for apartment 32, leaves a net return from the property of only \$1,958.16, or less than four per cent on \$52,500.00 the valuation fixed by the Commission. If only two per cent depreciation be allowed, the total for operation and depreciation becomes \$7,166.88, leaving a net return of only \$2,408.26 or four and one-half per cent on \$52,500.00

From the foregoing it is thought to appear conclusively that even on the low valuation fixed by the Commission the findings in both cases are unjust and confiscatory.

It is therefore respectfully submitted that the findings of the Commission should be set aside.

JOSEPH W. COX,
JOSEPH T. SHERIER,
Attorneys for Appellant.



COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

OCT 4 1922

IN THE

Henry A. Hodges
Court of Appeals, District of Columbia.

No. 3833.

H. L. RUST, APPELLANT,

vs.

GEORGE W. TUCKER, APPELLEE.

No. 3834.

H. L. RUST, APPELLANT,

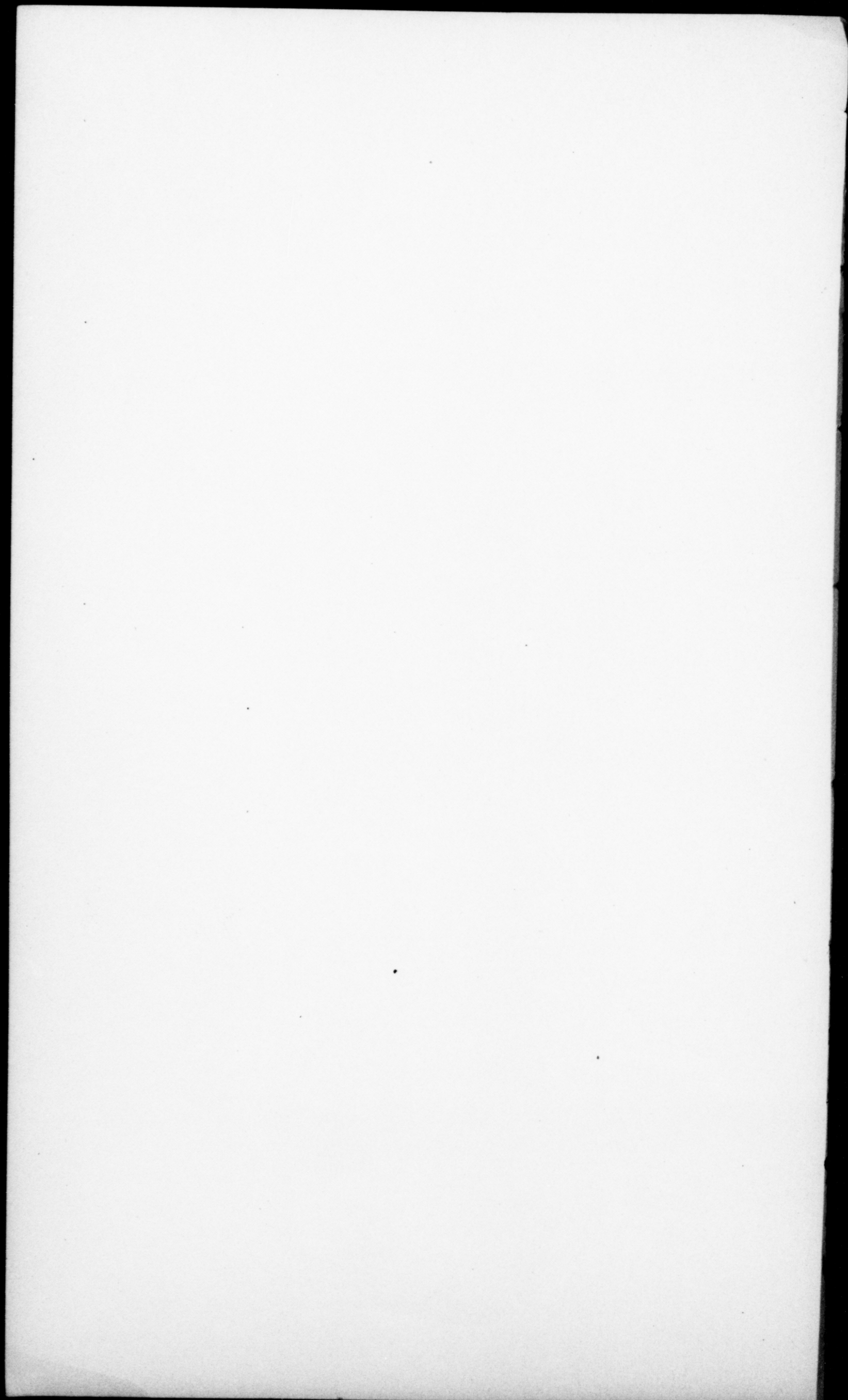
vs.

R. E. PILKINTON, APPELLEE.

ARGUMENT OF THE RENT COMMISSION.

CHAPIN BROWN,

*Attorney for the Rent Commission
of the District of Columbia.*



IN THE
Court of Appeals, District of Columbia.

No. 3833.

H. L. RUST, APPELLANT,

vs.

GEORGE W. TUCKER, APPELLEE.

No. 3834.

H. L. RUST, APPELLANT,

vs.

R. E. PILKINTON, APPELLEE.

ARGUMENT OF THE RENT COMMISSION.

There are two separate appeals from two separate determinations of the Rent Commission fixing the rent for apartments 32 and 34 in "The Lamont" apartment-house, located

at No. 1627 Lamont Street northwest, city of Washington, District of Columbia.

Although there are two separate printed records of the appeals (No. 3833, H. L. Rust, appellant, *vs.* George W. Tucker, and No. 3834, H. L. Rust, appellant, *vs.* R. E. Pilkinton), yet the attorneys for appellant (H. L. Rust) in both cases preferred to file one combined brief in both cases. I have, therefore, followed his procedure and file this printed argument of the Rent Commission in both cases.

The combined proceeding in which the rents of these apartments (Nos. 32 and 34) were fixed was based upon the complaints filed respectively by the appellees, Tucker and Pilkinton, against the appellant, H. L. Rust, alleging that the rents that they were respectively paying were unfair and unreasonable in view of the size, condition, and location of the same, and also of the service furnished respectively to the complainants, etc. (See copies of the complaints in the printed records of both cases, No. 3833 and No. 3834.)

I will first consider appeal in apartment 34 (Appeal 3834).

The evidence submitted (see R., 3834) to the Rent Commission shows that said apartment 34 is one on the third floor of said apartment-house, in the rear; that the apartments in the rear of the building are less desirable than those in the front; that the front apartments face south and have a better outlook; that there is a public alley in the rear of said apartment-house; that apartment 34 contains three rooms, a kitchen, a bath, and a small entrance hall; that on October 1, 1909, the complainant paid the sum of \$35.00 per month as rent for said apartment; that in October, 1910, his rent was reduced to \$32.50 per month; that in October, 1912, his rent was further reduced to \$30.00

per month; that in November, 1917, his rent was increased to \$33.00 per month, and that in 1920 his rent was further increased to \$55.00 per month for said apartment; that the janitor does not give his whole time to said apartment-house, but has other employment during the day; that the hot-water plumbing is constantly out of order; that the complainant did not receive any screens for his apartment until August, although he had asked for screens many times; that there is no elevator in said apartment-house and no bells; that said apartment-house is *assessed for taxes in the District of Columbia as follows: Land, \$3,833; building, \$30,000* (R., pp. 2, 3).

George M. Tucker, the tenant of apartment 32 in said apartment-house, who had complained of his rent and whose case was considered by the Rent Commission in connection with the case of the appellee, Pilkinton, offered in evidence a letter received by him from Mrs. Sabina M. Miller, the owner of said apartment-house, which shows that the furnace in said apartment-house is not sufficient to adequately heat the building (R., p. 7).

Upon consideration of the foregoing evidence submitted on behalf of the appellee, Pilkinton, and said Tucker, and the evidence submitted by the appellant, the Rent Commission, after personally inspecting said apartments and said apartment-house, and after careful consideration of the character of construction and the condition of said apartment-house and the character of the service furnished therein, fixed the fair and reasonable rent of said apartment 34 at \$47.50, and of said apartment 32 at \$55.00 per month, and after the determinations fixing these rents was filed the Rent Commission, upon the request of the appellant, found and determined

the fair market value of said apartment-house to be \$52,500.00.

In view of the evidence before the Rent Commission and its view and inspection of the property, it is respectfully submitted that this court should not disturb the determination in either case.

The case of said Tucker, the tenant of said apartment 32, is also before this court on appeal, and is entitled H. L. Rust, appellant, *vs.* George W. Tucker, April term, No. 3833.

The Rent Commission is not bound by the opinions of witnesses.

Lewis, Eminent Domain, page 1121.

"The opinions of experts as to value, however, are not to be passively received and blindly followed, but are to be weighed by the jury and judged of in view of all the testimony in the case and jury's own general knowledge of affairs, and have only such consideration given them as the jury may believe them entitled to receive."

10 R. C. L., sec. 187.

"In considering the adequacy of awards in condemnation proceedings the court will take into consideration that the commissioners of condemnation were selected for their wide knowledge of such matters and their personal acquaintance with the section involved, and were entitled to adhere to their own opinion against the testimony of witnesses brought before them upon either side; and in the absence of fraud, corruption, or gross mistake, will not review the evidence."

In re Condemnation of Squares 226 *et seq.*,
37 W. L. R., 801.

The view and inspection made by the Rent Commission is evidence, and it is impossible for the court to determine how far the determination is based on the other evidence, or how far it is attributable to the Rent Commission's own observation and judgment.

In *Shoemaker vs. U. S.*, 147 U. S., 282, which was an appeal involving the condemnation of land necessary for Rock Creek Park, the court said:

"If, as we have said, the court below was right in refusing to restrict the commissioners to a mere consideration of the evidence adduced, then it would seem to follow that the court could not be legitimately asked, in the absence of any exceptions based upon charges of fraud, corruption, or plain mistake on the part of the appraisers, to go into a consideration of the evidence. *The court cannot bring grounds of judgment upon which the appraisers have proceeded.* The attempt to do so would transfer the function of finding the values of lands from the appraisers to the court. Such a course would have presented a much more serious allegation of error than we find in the objection as made.

"The rule on this subject is so well settled that we shall content ourselves with repeating that quotation from *Mills on Eminent Domain* (246) made in the opinion of the court below: 'An appellate court will not interfere with the report of the commissioners to correct the amount of damages, except in cases of gross error, showing prejudice or corruption. The commissioners hear the evidence, *and frequently make their principal evidence out of a view of the premises*, and this evidence cannot be carried up so as to correct the report as being against the weight of the evidence. Hence for error in judgment of the

commissioners in arriving at the amount of damages there can be no correction. *The commissioners are not bound by the opinions of experts or by the apparent weight of evidence, but may give their own conclusions.' "*

The Rents Act is a remedial statute and should be given a latitudinarian, liberal construction, to the end that the beneficial object of its enactment may be accomplished.

In a *criminal prosecution* for violation of the law regulating the sale of intoxicating liquor in the District of Columbia this court used the following language:

"Notwithstanding the *penal clauses*, without which it would be a dead letter, the act is to be regarded as a general revenue and remedial statute, and given a liberal, and, at the same time, reasonable construction in aid of the remedy rather than a strict and narrow one in the interest only of those who violate or evade its provisions."

Lauer *vs.* District of Columbia, 11 App. D. C., 453.

The main purpose of the act is to suspend the law of supply and demand and to substitute fair and reasonable values for the values which the operation of that law would indicate. If the law of supply and demand should be given full sweep, the Rents Act would become a nullity.

Respectfully submitted,

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